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Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Latta, Marion, Camden, and  
Blythewood, South Carolina

)  
)  
) MM Dkt No. 93-47  
) RM-8188  
)  
)  
)

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**REPLY COMMENTS**  
**OF**  
**WINFAS OF BELHAVEN, INC.**

Gary S. Smithwick  
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**WINFAS OF BELHAVEN, INC.**

May 28, 1993

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### SUMMARY

By Notice of Proposed Rule Making, the Commission proposed the substitution of FM Channel 232C3 at Latta, South Carolina, for existing FM Channel 232A at Marion, South Carolina, and the modification of the facilities of WWPB, Marion, South Carolina, from Class A at Marion to Class C3 at Latta. WWPB is licensed to Winfas of Belhaven, Inc. ("Winfas").

Joseph Adams Ranke has filed mutually exclusive Comments and Counterproposal in which he proposes the allotment of FM Channel 232A to the hamlet of Blythewood, South Carolina (pop. 146).

Winfas's proposal is overwhelmingly preferred to Ranke's because (a) Winfas would bring a first local service to Latta

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**REPLY COMMENTS**  
**OF**  
**WINFAS OF BELHAVEN, INC.**

Winfas of Belhaven. Inc. ("Petitioner") by its

("Ranke") filed "Comments and Counterproposal" in which he proposed the allotment of FM channel 232A at the hamlet of Blythewood, South Carolina.<sup>1</sup> Ranke's proposal must be rejected. Petitioner's proposal is overwhelmingly preferred to Ranke's. The reasons are set out infra.

#### The Applicable Law

2. In Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982), the Commission set out the allotment priorities it would consider when choosing between conflicting proposals. They are:

1. First full-time aural service;
2. Second full-time aural service;
3. First local service; and
4. Other public interest matters.

(Co-equal weight is given to priorities 2 and 3.)

Here, no first or second aural service would be provided by either Petitioner or Ranke; hence there is no priority for either Latta or Blythewood under priorities 1 and 2. As Petitioner is the only party to propose first local service, this case must turn on priority 3. Consideration of priority 4 only adds weight to Petitioner's case.

#### Petitioner Proposes First Local Service

3. Attached hereto is a Technical Exhibit<sup>2</sup> prepared by Petitioner's technical consultant. It demonstrates that

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<sup>1</sup> Public Notice of Ranke's Counterproposal was given by Report No. 1942, released May 25, 1993.

<sup>2</sup> Attachment 1.

Petitioner proposes to provide first local service to the residents of Latta, a community of 1,565 (1990 census). In contrast, Ranke proposes to provide only second local service to the residents of Blythewood, a place with a population of only 146. Blythewood already has assigned to it a construction permit for new standard broadcast station WBAJ. Therefore, on priority 3 alone, Petitioner's proposal should be selected. Ranke states that the standard broadcast station has never been constructed, but fails to mention that the construction permit for WBAJ is very much active. Commission records reveal that WBAJ's construction permit does not expire until October 12, 1993. Thus, for Section 307(b) purposes, Ranke's proposal offers only second local service to Blythewood. See Santee Cooper Broadcasting Co. of Hilton Head, Inc., 57 RR 2d 662, 667 (Rev. Bd. 1984) (Granted construction permits are considered for 307(b) purposes.)

The Residents of Blythewood are Already Well Served

4. In addition to local service to be provided by WBAJ, the Technical Exhibit shows that Blythewood receives service from in excess of ten stations. Latta, on the other hand, is not in or near any urbanized area or MSA. Latta receives service from stations in Marion, Florence, or Dillon counties, but the number of services is less than those available in Blythewood.

Petitioner Will Serve 131,815 Additional Persons

5. The Technical Exhibit also shows that the increase in service offered by Petitioner should be considered.<sup>3</sup>

The present WWPDP facility provides 1.0 mV/m service to 71,351 persons. WWPDP operating as a Class C3 station would provide service to 191,322 persons. Based on the number of potential persons in the loss area, and those persons who

City of Florence, South Carolina.<sup>4</sup> The City of Florence is, however, served by more than five other services. The rural areas which will theoretically lose service from WWPD (Class A facility) will not lose any first or second aural service. The loss area, in whole or in part, receives service from eleven other stations.<sup>5</sup>

Ranke's Proposal Cannot Be Effected  
without Additional Proceedings and Delay

7. In order to upgrade WWPD, it is necessary to change the channel of WPUB-FM, Camden, South Carolina. The licensee of WPUB-FM, Kershaw Radio Corporation ("KRC"), was very reluctant to disrupt its operations to accommodate Petitioner, until Petitioner agreed to pay WPUB-FM's expenses of \$22,000 and provide WPUB-FM an FM transmitter so the station could upgrade to 6 kW without additional cost. A copy of the agreement between Petitioner and the licensee of WPUB-FM was filed as Attachment B to Petitioner's Petition for Rulemaking.<sup>6</sup> While Ranke has agreed to reimburse KRC for its reasonable costs to modify WPUB-FM to change its channel, it has not agreed to assume Petitioner's

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<sup>4</sup> There are a total of 11,844 persons in the overall theoretical loss area of which 4,910 persons are in the City of Florence. Population determined, assuming uniform distribution in Civil Division, calculated using a polar planimeter.

<sup>5</sup> WJMX, Florence, South Carolina; WJAY, Mullins, South Carolina; WKXS, Marion, South Carolina; WZNS, Dillon, South Carolina; WWFN, Lake City, South Carolina; WKSX, Marion, South Carolina; WKZQ-FM, Myrtle Beach, South Carolina; WMXT, Pamplico, South Carolina; WSQN, Scranton, South Carolina; WYAV, Conway, South Carolina; and WCIG, Mullins, South Carolina.

<sup>6</sup> Petitioner was required by KRC to place the money in escrow pending the outcome of the rulemaking proceeding.



obligations under that agreement. Attached hereto<sup>7</sup> is a copy of the declaration of the president of KRC, Gary M. Davidson, who states that WPUB-FM will not voluntarily change its channel except as a part of its contractual obligations to Petitioner. At paragraph 3 of the NPRM, the Commission noted that it would not issue an Order to Show Cause to KRC since KRC had agreed to change its channel. However, KRC's agreement was conditioned on more than mere reimbursement. Thus, the Commission cannot modify WPUB-FM's license in conjunction with the allotment of a new FM channel to Blythewood unless it first affords WPUB-FM an opportunity to show cause why its license should not be modified. The licensee of WPUB-FM states that any such order would be resisted with vigor. Therefore, the end result of allotting a new channel to Blythewood would be a serious delay, and perhaps termination of the allotment procedure with no allotment made. On the other hand, with KRC's consent, the upgrades of WWPB and WPUB-FM could be accomplished very rapidly.

Ranke's Proposal is a Cynical Attempt to Allot  
a 13th FM City-Grade Aural Service to Columbia, S.C.

8. As shown in the Technical Exhibit, it appears that Ranke's true intention is not to provide service to the hamlet of Blythewood, but on the contrary, to provide the 13th FM principal city contour service to Columbia, South Carolina, the state's largest city and capital. Exhibits 6

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<sup>7</sup> Attachment 2. A facsimile copy is being filed herewith. Counsel will file the original declaration upon receipt.

and 7 unmask Ranke's plan. Ranke has selected a site approximately one mile from Columbia's city limit. The Technical Exhibit does not take into consideration the five AM stations licensed to Columbia. or the additional AM and

Columbia." Attached<sup>8</sup> is a copy of a letter from Dennis Murphy, a resident of Richland County, who is personally familiar with Blythewood. He states that (a) the majority of Blythewood residents work in the Columbia area; (b) the residents of Blythewood are listed in the Columbia telephone directory; and (c) there is no separate and distinct telephone directory for Blythewood. To Mr. Murphy's knowledge, Blythewood has neither a public hospital nor a local newspaper. He reports that Blythewood has no distinct downtown area, but is made up of a strip shopping center, fast food restaurants and branch banks. Ranke provided nothing more than a conclusory statement that Blythewood meets the Commission's criteria for allotment purposes. See East Hemet, CA, et al., 67 RR 2d 146, fn 5 (1989) (Community status denied where, inter alia, petitioner failed to produce affidavits of persons with knowledge to support showing). The mere fact that Blythewood is incorporated and has its own government is not sufficient to elevate it to "community" status. See Teche Broadcasting, 33 RR 2d 902 (Rev. Bd. 1975) (to determine community status, Commission looks at "totality of circumstances.") Without evidence, ~~unsubstantiated by Ranke~~ it is impossible to find that

9. Interdependence. Additionally, Mr. Murphy's statement provides evidence that Blythewood is interdependent on Columbia and Richland County. In RKO General (KFRC), 5 FCC Rcd 3222 (1990) and Faye and Richard Tuck, Inc., 3 FCC Rcd 5374 (1988), the Commission set out three factors to test whether a town is deserving of a preference under §307(b) of the Act. The test is necessary to determine which of several communities, if any, merit a dispositive preference under §307(b). This is the so-called

Factor 3: Whether the community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area;

Factor 4: Whether the specified community has its own local government and elected officials;

Factor 5: Whether the specified community has its own telephone book provided by the local telephone company, or zip code;

Factor 6: Whether the specified community has its own commercial establishments, health facilities, and transportation systems;

Factor 7: The extent to which the specified community and the central city are part of the same advertising market; and

Factor 8: The extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries.

In RKO General, Inc. (KFRC), supra, the Commission found that Richmond, California, was a part of the San Francisco Urbanized Area and refused to grant a dispositive 307(b) preference to an applicant for that community. While Richmond, California, and Blythewood, South Carolina, have some similarities, Blythewood has even less to offer than Richmond.

Blythewood is a bedroom community for Columbia. So under Factor 1, there is no finding of independence for

Blythewood, since many residents of Blythewood work in the Columbia area.

Under Factor 2, the Commission found it important that Richmond had no daily newspaper; Ranke submitted no evidence that Blythewood has such a newspaper.

Under Factor 3, the Commission was unable to conclude that Richmond residents perceive themselves as members of a separate community. Other than the existence of city government, Ranke submitted no evidence that Blythewood residents perceive themselves as members of a separate

on Richland County for such services. See also Amendment of Section 73.202(b) of the Commission's Rules (Eatonton, et al., GA), 6 FCC Rcd 6580 (MMB 1991) (Allotment denied where community received all services from a nearby big city.)

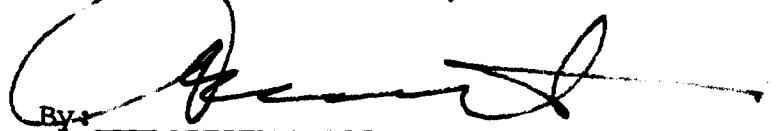
"On balance," the Commission said, "the mixed nature of the showing under the criterion's eight factors" was insufficient to overcome the inference that Richmond is interdependent. In the instant case, on balance, the application of the eight factors is insufficient to overcome the inference that Blythewood is interdependent.

#### Conclusion

In summary, Petitioner's proposal to upgrade WWPD and provide a first service to Latta is vastly superior to Ranke's thinly-disguised proposal to allot a 13th FM station to Columbia. The Commission should take the action requested in Petitioner's Petition, upgrade WWPD to Channel 232C3 at Latta, change the channels of WPUB-FM from Channel 232A to 274A, and DENY Ranke's proposal.

Respectfully submitted,

**WINFAS OF BELHAVEN, INC.**

By: 

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May 28, 1993

**ATTACHMENT 1**



REPLY COMMENTS  
MM DOCKET #93-47  
WINFAS OF BELHAVEN, INC.  
ALLOT CHANNEL 232C3  
LATTA, SOUTH CAROLINA  
May 1993

Technical Exhibit  
TE-1

Bromo Communications, Inc.  
P.O. Box M - 1331 Ocean Boulevard, Suite 201  
St. Simons Island, Georgia 31522  
(912) 638-5608

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REPLY COMMENTS  
MM DOCKET #93-47  
WINFAS OF BELHAVEN, INC.  
ALLOT CHANNEL 232C3  
LATTA, SOUTH CAROLINA  
May 1993

TECHNICAL COMMENTS

1. These technical comments and attached exhibits were prepared on behalf of Winfas of Belhaven, Inc. ("Winfas"), petitioner in MM Docket #93-47. Winfas is seeking to improve the facilities of WWPB, Channel 232A, Marion, South Carolina, by upgrading the Channel to a Class C3 and changing the community of license from Marion to Latta, South Carolina.

BACKGROUND

2. In order to upgrade WWPB to C3 and change the community of license, Winfas requested that Channel 274A be substituted for Channel 232A at Camden, South Carolina. Further, Winfas requested that WPUB-FM be ordered to change channels. In an effort to expedite matters, Winfas had reached an agreement with the licensee of WPUB-FM, Kershaw Radio Corporation ("KRC"), for reasonable reimbursement of expenses to make the necessary channel change. KRC has consented to the change of channels.

3. The allotment of Channel 232C3 to Latta, South Carolina, will provide this community of 1,565 persons (1990 census) with its first local broadcast service.

Additionally, when Channel 274A is allotted to Camden, South Carolina, it would enable WPUB-FM, for the first time, to operate as a 6.0 kilowatt Class A facility. At the present time, WPUB-FM can not operate as a 6.0 kilowatt Class A due to a preexisting §73.207 shortspace with WWPB, Channel 232A, Marion, South Carolina.

4. During the initial comment period in this docket, two parties filed comments; Winfas restated its interest in upgrading WWPB and Joseph Adams Ranke ("Ranke") filed comments supporting the substitution of channels at Camden, South Carolina, but requested that Channel 232A be allotted to Blythewood, South Carolina. The allotment of Channel 232A to Blythewood is mutually exclusive with the proposed upgrade of WWPB to Channel 232C3 at Latta, South Carolina.

5. In its comment, Ranke requests that Channel 232A be allotted to Blythewood, South Carolina, as that community's purported first local service. This request does require that Channel 274A be substituted for Channel 232A at Camden, South Carolina. Ranke states that Blythewood is an incorporated community in Richland County with a 1990 population of 146 persons. The reference site which was selected by Ranke was as far as possible from the proposed Latta site, but still close enough to provide city grade coverage to Blythewood. While not providing specific data to support its position, Ranke claims that an upgraded WWPB will provide additional service to a "moderately populated area"

and that its request "will provide additional service in a heavily populated area". Ranke also contends that some persons presently receiving service from WWPB will not be able to receive the facility once the station upgrades. <sup>1</sup>

6. Ranke further suggests that his proposal and that of Winfas be considered, under the Commission's Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982) as Priority #3, first local service. Ranke claims that his proposal should be favored over the Winfas request as a more efficient use of the spectrum.

#### DISCUSSION

7. Blythewood, South Carolina, re-incorporated in 1974, is located in northern Richland county just over fourteen miles north-northeast of Columbia, South Carolina, county seat of Richland county and the State of South Carolina Capitol. <sup>2</sup> According to the 1990 U.S. Census, Blythewood has a population of 164 persons. Blythewood Census Division, of which the town of Blythewood is a part, has a population of 6,782 persons. (See Exhibits #1 thru #5.)

1) Ranke does not provide any population data to support its loss of service claim.

2) Blythewood's incorporation charter, originally approved in 1879, expired. The town was re-incorporated in 1974.

10. The community of Blythewood presently receives service from in excess of ten stations. <sup>4</sup> Blythewood, in addition to already enjoying the services available from the other stations licensed to communities in the Columbia urbanized area, has an outstanding construction permit for an AM station authorized to Blythewood on 880 kHz with the associated call sign WBAJ. The permit does not expire until October 10, 1993. The potential allotment on an FM channel to this community would provide second local service to Blythewood. <sup>5</sup>

11. Latta, South Carolina, is not located in or near any urbanized area or MSA (see Exhibit #8). With a population of 1,565 persons (1990 Census), Latta does not have any locally licensed (or authorized, yet unbuilt) broadcast facilities. The allotment of Channel 232C3 would provide the community with first local service. Latta presently receives service from stations in Marion, Florence and Dillon Counties, however, the number of services is far less than those available in Blythewood. <sup>6</sup>

4) WVOC, WOIC, WOMG, WOMG-FM, WCOS, WCOS-FM, WQXL, WARQ, WNOK (all Columbia, SC); WTGH, Cayce, SC; WSCQ, West Columbia, SC; WWDN, Sumter, SC; WMFX, St. Andrews, SC; and WTCB, Orangeburg, SC.

5) A Channel 232A facility at Blythewood would provide city grade service to Columbia, SC. This would represent the thirteenth FM city grade signal in the community. This does not take into consideration the five AM stations licensed to Columbia.

6) WDSC, Dillon, SC; WJMX, Florence, SC; WKXS, Marion, SC; WZNS, Dillon, SC; WKSJ, Marion, SC; WJMX-FM, Cheraw, SC; WKML, Lumberton, NC; and WMXF-FM, Laurinburg, NC.

2 The Court of Rythwood is adjacent to the Columbia

12. Ranke, in its comments, alludes to a loss of

services to "a significant number of persons now within the [WFO's]

service to 191,322 persons. Based on the number of potential persons in the loss area (as noted above), and those persons who would continue to receive the station after an upgrade, WWPB would provide new service to 131,815 persons. This represents a 54% increase in population over the Class A. The number of persons who will lose service is less than 10% of the overall gain in population who will receive new service.

#### SUMMARY

14. The allotment of Channel 232C3 to Latta, South Carolina, should be considered under Priority #3, first local service. The proposed Ranke allotment to Blythewood, due to the existence of the authorized construction permit for WBAJ, should be considered under Priority #4, other public interest matters.

15. The physical location of Blythewood, South Carolina, to the Columbia Urbanized area, its inclusion in the Metropolitan area and its reliance on Richland County shows that Blythewood is not independent from the larger community.

16. The activation of Channel 232C3 at Latta, South Carolina (a community of 1,565 people), will provide new service to 131,815 persons, compared to the presently



authorized WHPD facility, without depriving Marion, South Carolina, of its only local service. <sup>9</sup> A Class A facility in Blythewood, South Carolina (a community of 164 people) would provide additional service to an area with numerous already establish services.

17. Therefore, Winfas requests that §73.202(b) of the rules be amended as follows:

Latta, South Carolina

Present

None

Proposed

232C3

Marion, South Carolina

Present

232A, 263C3

Proposed

263C3

Camden, South Carolina

Present

232A

Proposed

274A

9) Marion will continue to receive locally licensed service from WKSX, Channel 263C3 and WKXS (AM) 1430 KHz.